

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
JOSEPH H. WHITE, )  
d.b.a. WHITE TIRE SERVICE, )  
Appellant )  
vs. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 319

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of a \$250.00 civil penalty for an alleged open burning violation of respondent's Regulation 1, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) in the Board's office at Lacey, Washington at 11:30 a.m., May 24, 1973.

Appellant appeared pro se, respondent through its counsel Keith D. McGoffin. Irene Dahlgren, Olympia court reporter, recorded the proceeding.

Witnesses were sworn and testified. Four exhibits were admitted.

From testimony heard, exhibits examined and transcript reviewed,

1 the Pollution Control Hearings Board makes these

2 FINDINGS OF FACT

3 I.

4 Joseph H. White operates the White Tire Service at 4708 East 112th,  
5 Tacoma, Pierce County. In January, 1971, appellant held a permit issued  
6 by respondent for burning natural vegetation. On January 5, 1971, the  
7 permit was cancelled after an inspector on respondent's staff observed  
8 an open fire containing tires burning on appellant's property. In  
9 connection with this fire, the inspector issued to appellant Notice of  
10 Violation Number 2993, citing Section 9.02 of respondent's Regulation 1,  
11 but no civil penalty was invoked.

12 II.

13 On February 1, 1973, an employee of appellant requested a burning  
14 permit for the demolition of a small building on appellant's property.  
15 An inspector on respondent's staff visited the property and refused to  
16 issue the permit unless tar paper and composition shingles were removed  
17 and a new site chosen more distant from a nearby trailer house.

18 III.

19 In the evening of February 28, 1973, in response to a call from the  
20 Summit Fire Department, an inspector on respondent's staff again visited  
21 appellant's property and observed a demolition pile of lumber and tar  
22 paper steaming after having been extinguished and the remnants of a  
23 fire still smoldering at another demolition pile of composition shingles,  
24 tar paper and lumber. The inspector issued to appellant Notice of  
25 Violation Number 7404, citing Section 9.02 of respondent's Regulation 1  
26 Subsequently, and in connection therewith, respondent served appellant  
27 with Notice of Civil Penalty Number 730 in the maximum allowable amount

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 of \$250.00. That penalty is the subject of this appeal.

2 IV.

3 Section 9.02 of respondent's Regulation 1 makes it unlawful to  
4 cause or allow an outdoor fire for the disposal of waste material without  
5 a valid written permit issued by respondent. Section 9.02 also states  
6 that it shall be prima facie evidence that the person who owns or  
7 controls the property on which an outdoor fire occurs has caused or  
8 allowed said fire.

9 V.

10 Appellant's uncorroborated contention is that the local fire  
11 department started the January 5, 1971 fire as a demonstration in fire  
12 fighting, and that neighborhood children ignited the fires on February 28,  
13 1973. Appellant's property is fenced, but the fence is broken and access  
14 is possible.

15 VI.

16 Michael Terry was employed by appellant to tear down appellant's  
17 building (Tr 22). Emery desired to dispose of it by means of a fire  
18 and attempted to do so by setting a fire with the permission and  
19 consent of appellant. (Tr 19).

20 From these findings, the Pollution Control Hearings Board comes  
21 to these

22 CONCLUSIONS

23 I.

24 The preponderance of evidence shows that appellant was in violation  
25 of Section 9.02 of respondent's Regulation 1 on both January 5, 1971 and  
26 February 28, 1973, as outlined in Notices of Violation Numbers 2993 and  
27 7404, respectively.

FINDINGS OF FACT,  
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II.

In view of the 1971 violation for which no civil penalty was invoked, Notice of Civil Penalty Number 730 is reasonable.

Therefore, the Pollution Control Hearings Board makes this

ORDER

The appeal is denied and Notice of Civil Penalty Number 730, in the amount of \$250.00, is sustained.

DONE at Lacey, Washington this 29th day of June, 1973.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward  
WALT WOODWARD, Chairman

W. A. Gissberg  
W. A. GISSBERG, Member

James T. Sheehy  
JAMES T. SHEEHY, Member

FINDINGS OF FACT,  
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